

NO. 01-18-00930-CR

KYLE DEAN KUYKENDALL

VS.

THE STATE OF TEXAS

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IN THE FIRST COURT

OF APPEALS

HOUSTON, TEXAS

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS

3/26/2019 5:09:26 PM

CHRISTOPHER A. PRINE
Clerk

**MOTION TO SET ASIDE MOTION TO WITHDRAW AS COUNSEL AND TO SET
ASIDE ANDERS BRIEF**

TO THE HONORABLE JUSTICES OF SAID COURT:

Now comes M. Patrick Maguire, Movant, and brings this Motion to Set Aside Motion to Withdraw as Counsel and to Set Aside Anders Brief, and in support thereof shows:

1. Movant is attorney of record for Kyle Dean Kuykendall, and was appointed by the Court to represent Defendant on appeal.

2. Movant filed a Motion to Withdraw as Counsel and an Anders Brief in this cause.

3. Prior to filing these documents, Movant conducted a review of the record and reviewed the applicable case authority. Movant identified a possible double jeopardy claim. However, Movant found no authority that explicitly supports Appellant's entitlement to relief on a double jeopardy claim. Movant reviewed the Court of Criminal Appeals' opinion in the *Marascio* case which dealt with a double jeopardy claim in connection with two failure to appear cases. Movant initially concluded that the *Marascio* opinion foreclosed relief in this case. It appears, however, from further review of the *Marascio* opinion that this issue is undecided, rather than decided adversely to Appellant. Therefore, Movant questions whether the double jeopardy issue previously analyzed is wholly frivolous.

4. Movant requests that the Court set aside the previously filed Motion to Withdraw as Counsel and set aside the Anders Brief and permit Movant leave of Court to brief a double jeopardy claim on Appellant's behalf.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Movant prays that the Court will grant his Motion to Set Aside Motion to Withdraw as Counsel and Anders Brief and permit briefing on the merits as to a double jeopardy claim.

Respectfully submitted,

M. Patrick Maguire, P.C.
Attorney and Counselor
945 Barnett Street
Kerrville, Texas 78028
Tel: (830) 895-2590
Fax: (830) 895-2594

By: /s/ M. Patrick Maguire
M. Patrick Maguire
State Bar No. 24002515
Attorney for Kyle Dean Kuykendall

CERTIFICATE OF SERVICE

This is to certify that on March 26, 2019, a true and correct copy of the above and foregoing document was served on the attorney for the State, Hon. Scott Monroe, via electronic transmission at scottm@198da.com, and whose address is 402 Clearwater Paseo, Suite 500, Kerrville, Texas 78028.

/s/ M. Patrick Maguire
M. Patrick Maguire